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Supreme Court of the United States

October Term, 1975
No. 75-1002

JOSEPH SKILKEN AND COMPANY, *et al.*,
Petitioners,

vs.

CITY OF TOLEDO, OHIO, *et al.*,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION

FRANK T. PIZZA
Director of Law
JOSEPH P. JORDAN
Assistant Director of Law
JOHN D. SCOUTEN
Assistant Director of Law
ROBERT E. W[illegible]NIEWSKI
Legal Intern
City of Toledo
327 Safety Building
Toledo, Ohio 43624
Attorneys for Defendants-Respondents

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-5647

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STATEMENT OF THE CASE

The petitioners herein apparently seek a writ of certiorari to the United States Court of Appeals for the Sixth Circuit in both Case No. 74-2116 entitled *Joseph Skilken & Co., et al. v. City of Toledo, et al., Ragan Woods Homeowners Association, et al.*, and in Case No. 74-2320 entitled *Joseph Skilken & Co., et al. v. City of Toledo, et al.*

Case No. 74-2320 entitled *Joseph Skilken & Co., et al. v. City of Toledo, et al.*, was commenced by the filing of a Complaint in the United States District Court for the Northern District of Ohio, Western Division, on May 28,

1974, entitled *Joseph Skilken and Company, et al. v. City of Toledo, et al.*, Case No. C74-202. Following a pretrial conference on June 5, 1974, various stipulations between the parties, and the Order of the Court of June 18, 1974, the defendants filed their Answer on June 25, 1974. The trial was placed on an accelerated schedule and, over the objection of the defendants, the trial commenced on July 15, 1974, and ended on July 19, 1974. The trial was bifurcated by the District Court, with the issues of injunctive and declaratory relief being heard by the Court and the issue of damages reserved for a later trial by jury.

Within three days after the answer to the Complaint was filed, a motion to intervene was filed by the Ragan Woods Homeowners Association and four individual property owners. Other motions to intervene were filed. The Ragan Woods Homeowners Association and others who attempted to intervene perfected an appeal to the Sixth Circuit Court of Appeals, which is Case No. 74-2116 entitled *Joseph Skilken & Co., et al. v. City of Toledo, et al., Ragan Woods Homeowners Association, et al.*, which was consolidated with Case No. 74-2320 for oral argument. Both cases were disposed of by the Opinion of the Sixth Circuit Court filed December 10, 1975.

Following the accelerated trial, the District Court took the case under consideration and on August 28, 1974 issued its Memorandum Opinion (Pet. App. 1A). On October 8, 1974, the Court issued its final Order regarding the declaratory and injunctive relief to be granted to the plaintiffs (Pet. App. 20A).

On October 18, 1974, the defendants, the City of Toledo, et al., filed their Notice of Appeal with the District Court,

and on that same date the plaintiffs filed a Motion to expedite the certification of the record to this Court. On October 21, 1974, the District Court ordered that the certified record on appeal be transmitted to this Court by October 25, 1974.

On December 11, 1974, the Clerk of the Circuit Court docketed the defendants' Appeal and the briefing schedule was accelerated so as to require the defendants-appellants' Brief to be filed with the Court on or before January 6, 1975. The plaintiffs filed no cross appeals in the instant matter.

The cases were argued to the Sixth Circuit Court of Appeals on February 3, 1975. On December 10, 1975, the Sixth Circuit Court of Appeals announced and filed its decision and Opinion (Pet. App. 25A).

STATEMENT OF FACTS

The original Complaint filed by the plaintiffs herein claimed jurisdiction under Sections 42 U.S.C. 1401, et seq.; 42 U.S.C. 1981, 1982, 1983, 2000(d), 3601, et seq. and the Thirteenth and Fourteenth Amendments to the United States Constitution. The District Court found jurisdiction pursuant to 28 U.S.C. 1331 and 1343 and 42 U.S.C. 3612 and 3617.

The plaintiffs are Joseph Skilken and Company (hereinafter Skilken), a corporation engaged in the development and construction of residential dwelling units; the Toledo Metropolitan Housing Authority (hereinafter TMHA); Sandra Hueston and Jose Maldonado, who claim to represent a class of persons defined by the District Court as: "All low income minority persons residing in the Toledo Metropolitan Area, who, by virtue of their race and pov-

erty, are unable to secure decent, safe, and sanitary housing in the City of Toledo, at rents or prices which they can afford without assistance from the Toledo Metropolitan Housing Authority (TMHA) and who are eligible for the Turnkey III Housing Program."

The defendants in the case are as follows: The City of Toledo (hereinafter City), a body corporate and politic established and organized under the laws of the State of Ohio; Harry Kessler, the elected Mayor of the City of Toledo and a member of the Toledo City Council; Defendants Cook, Copeland, Daoust, Douglas, Galvin, Nies, Pietrykowksi and Reddish are the duly elected Council members of the City of Toledo; the defendant, City Plan Commission (hereinafter Commission), a commission established and organized under the statutes of the State of Ohio, Ohio Revised Code Sections 3735.27 et seq., and the ordinances of the City of Toledo; Defendants Burke, Cooke, Martin, Schimmel and Stoepler are members of the Commission appointed pursuant to the statutes of the State of Ohio and the ordinances of the City of Toledo. Unless specifically indicated, the defendants will hereinafter be collectively referred to as the "defendants."

ARGUMENT

The petitioners cite as reasons for granting the Writ that there is a conflict among the Circuits and that the decision of the Sixth Circuit Court of Appeals in these cases is inconsistent with the prior decisions of this Court. The primary conflict which petitioners apparently see is with the decision of the Seventh Circuit Court of Appeals in the case of *Metropolitan Housing Development Corp. v. Village of Arlington Heights*, 517 F.2d 409, *cert. granted*, 44 U.S.L.W. 3358 (U.S. Dec. 15, 1975). They also cite as being

in conflict with the decision of the Sixth Circuit the following, to-wit: *United States v. City of Black Jack*, 508 F.2d 1179 (8th Cir. 1974), *cert. denied*, 422 U.S. 1042 (1975); *Kennedy Park Homes Ass'n v. City of Lackawanna*, 436 F.2d 108 (1970), *cert. denied*, 407 U.S. 1010 (1971); *Crow v. Brown*, 457 F.2d 788 (5th Cir. 1972) (per curiam); and *United Farmworkers of Florida Housing Project, Inc. v. City of Delray Beach*, 493 F.2d 799 (5th Cir. 1974). These cases are factually unlike the instant case.

The City of Toledo is not a racially segregated city and the action by the Council of the City of Toledo and the City Plan Commission did not have a disproportionate racial impact. The population of the City of Toledo in 1970 was 329,068, of whom 85% were white, 14% were black, and 1% of other minority groups. 28% of the population of the City of Toledo, or 35,000 households were eligible for the kind of public housing under consideration in this case. 21% of the eligible for such public housing were black or other minorities, and 79% were white. Thus, there are more than three times as many whites who are eligible for public housing as minorities (Appendix 17).*

The petitioners have attempted to create an impression that the City of Toledo is racially segregated by characterizing an area of the City as the "Black Corridor" or the "Southwest Corridor." While that may be a catchy phrase, it is unsupported by the facts. There are black people living in every area of the City of Toledo. This fact was testified to by plaintiffs' witness. Thus, Emerson Cole,

*Actually, the percentage of minority people eligible for public housing is less than 21%. Plaintiffs' experts who testified to those figures used an income eligibility figure which was too low and testified that if they had used a higher figure more whites would be eligible and consequently a smaller percentage of minorities.

a black member of the Ohio Civil Rights Commission, who had lived in Toledo for 43 years, testified as follows:

> "Q. It is a fact, is it not, that there are black people living in virtually every area of the City of Toledo?
>
> "A. Yes." (Appendix 17.)

Testimony by a number of black witnesses, including plaintiffs' own witnesses, indicated that they lived in the "Southwest Corridor" (See testimony of Emerson Cole (Appendix 17); Wayman D. Palmer (Appendix 18); Stratman Cooke (Appendix 18); and E. L. Leverette (Appendix 19)). *All of these witnesses who were questioned on the subject indicated that their place of residence was a matter of their own free choice and not due to any lack of available housing for blacks in other areas* (Appendix 17, 18).

Uncontroverted testimony by Wayman D. Palmer, the Director of the Department of Community Development for the City of Toledo, clearly established that the City, in cooperation with the Federal government, has poured millions of dollars into programs designed to eradicate discrimination and thereby aid minority citizens of the City of Toledo, including millions of dollars for housing relocation (Appendix 19-24).

This is entirely unlike the factual situation that we find in each of the cases cited by the petitioners as being in conflict with the instant case. In the case of *Metropolitan Housing Development Corp. v. Village of Arlington Heights*, 517 F.2d 409 (1975), the Seventh Circuit Court noted:

> "According to statistics of plaintiffs' expert, demographer and urbanologist Pierre de Vise, Arlington Heights is the most residentially segregated community in the Chicago metropolitan area among municipalities with more than fifty thousand residents." (Footnote 1, p. 414)
>
> ". . . More specifically, the population of Arlington Heights in 1970 was 64,884, but only twenty-seven residents were black. The four-township northwest Cook County area, of which Arlington Heights is a part, had a population increase from 1960 to 1970 of 219,000 people, but only 170 of these were black. Indeed, the percentage of blacks in this area actually decreased over this ten-year span while the percentage of the population in the entire Chicago metropolitan area that was black increased from fourteen percent to eighteen percent." (p. 414)

Perhaps more significant, it appears that Arlington Heights was actually exploiting the problem. The Court said:

> "Indeed, it has been exploiting the problem by allowing itself to become an almost one hundred percent white community."

It is clear that the Seventh Circuit limited its Opinion to the factual situation that existed in Arlington Heights. The Court said:

> "We therefore *hold that under the facts of this case* Arlington Heights' rejection of the Lincoln Green proposal has racially discriminatory effects." (emphasis added) (p. 415)

Such a factual situation is totally unlike the City of Toledo.

In the case of *Crow v. Brown*, 457 F.2d 788 (1972), it appears that the county officials who were acting in that

case did so for the avowed purpose of excluding blacks from certain areas of the county. Thus, the Fifth Circuit Court of Appeals said:

> "The district court accurately and succinctly stated the issue in these consolidated cases:
>
> > "The broad issue raised by these plaintiffs here . . . is whether the Fourteenth Amendment to the United States Constitution prohibits the County defendants from exercising whatever discretion allowed by municipal law *for the avowed purpose of excluding low-income blacks* from apartments proposed for construction on land zoned for apartments." (emphasis added)

Certainly there is no such avowed purpose to discriminate in the instant case. In addition, in the *Crow* case, *supra*, a pattern of residential racial discrimination was clear. Thus, the District Court found:

> "Within the immediate future, unless drastic changes occur, it is *not merely possible but certain* that Atlanta will become, in essence, a black city with a solid white perimeter." (Quoted by the Fifth Circuit Court of Appeals at 789) (emphasis added)

Such a factual situation is totally unlike the City of Toledo.

In the case of *United Farmworkers of Florida Housing Project, Inc. v. City of Delray Beach*, 493 F.2d 799 (1974), we see a case of clearly discriminatory conduct. The Fifth Circuit Court of Appeals said:

> "In the light of this duty, we believe that the district court's threshold determination of 'no satisfactory evidence of discrimination' is clearly erroneous. For the evidence presented below clearly demonstrates

> that the effect of the City's action was racially discriminatory: minority citizens' requests were refused while white citizens' requests were granted. It was undisputed below that the City has made exceptions to its annexation requirement for whites. The City would not do so for these minority farmworkers. It is also undisputed that the City has changed its Master Land Use Plan designations for whites. Again, the City would not do so for these farmworkers. From this alone, it is clear to us, and it should have been clear to the city officials, that the effect of their refusal was racially discriminatory. To prove a prima facie case of racial discrimination, no more is required."

Such a situation does not exist in the City of Toledo.

In the case of *United States v. City of Black Jack, Missouri*, 508 F.2d 1179 (1974), we have a situation very much like Arlington Heights (*Metropolitan Housing Development Corp. v. Village of Arlington Heights, supra*), and the unincorporated area around the City of Atlanta, Georgia (*Crow v. Brown*, 457 F.2d 788). That is, the Village of Black Jack was virtually all white. The Eighth Circuit Court of Appeals said:

> "The racial composition of Black Jack and the surrounding area was set forth by the District Court in its opinion, and is not contested by the parties:
>
> > "Statistical information submitted shows that at the relevant time the area which is now the City of Black Jack was virtually all white, with a black population of between 1% and 2%. The area of St. Louis County north of Interstate Highway 270, which includes Black Jack, is approximately 99% white. • • •

"The virtually all-white character of Black Jack was in marked contrast to the racial composition of other parts of the St. Louis area. In 1970, the pupil population of the City of St. Louis School District was 65.6% black. * * * In 1970, the Kinloch School District, which is only two miles from the nearest boundary of the Hazelwood School District (of which Black Jack is a part), had 1,245 students, all of whom were black.

"The percentage of blacks in St. Louis County has increased only slightly overall from 4.1% in 1950 to 4.8% in 1970. During the same period, the percentage of blacks in the City of St. Louis more than doubled from 17.9% to 40.9%.

"Between 1950 and 1970, the population of the city declined * * * (by) 27%, while the population of the county more than doubled * * *. From 1960 to 1970, there were approximately 102,298 new housing starts in the county, and 15,348 in the city, a ratio of almost 7 to 1. During the same period, the city had a net decrease of 24,548 housing units, while the county had a net increase of 84,169. * * *

"The concentration of blacks in the city and in pockets in the county is accompanied by the confinement of a disproportionate number of them in overcrowded or substandard accommodations. The 1970 census reveals that in St. Louis city and county approximately 40% of the black families, as compared with 14% of the white families, lived in overcrowded units. * * *" *United States v. City of Black Jack, Missouri, supra,* 372 F. Supp. at 325.

In addition, in *City of Black Jack,* we also find deliberate racial discrimination by the federal, state and local

governments. In commenting on this aspect of the case, the Eighth Circuit Court of Appeals said:

> "The discriminatory effect of the ordinance is more onerous when assessed in light of the fact that segregated housing in the St. Louis metropolitan area was
>
> > * * * in large measure the result of deliberate racial discrimination in the housing market by the real estate industry and by agencies of the federal, state and local governments. * * *" *United States v. City of Black Jack, Missouri, supra,* 372 F. Supp. at 326.

In the instant case, we find neither intentional discrimination by city officials nor an all-white city such as Black Jack.

We find the same pattern repeated in the case of *Kennedy Park Homes Association v. City of Lackawanna, New York,* 436 F.2d 108 (1970). In *Lackawanna,* we find all (98.9%) of the minority people living in a separate area of the city physically separated from the all-white area by a single bridge. The Second Circuit Court of Appeals found:

> "First, we have a three-ward city with 98.9 percent of all of its nonwhite citizens living in the First Ward. The Second Ward, with a population of 8,974, has only one nonwhite person, while only 29 nonwhites reside in the Third Ward. The Bethlehem Steel Company's plant, with its more than 20,000 employees, occupies at least half of the land area of the First Ward. This Ward also has the oldest, most dilapidated dwelling houses, and the highest residential density with the greatest percentage of persons per unit in the city. Health-wise it is classified as a 'high risk area,' having double the incidence of tuberculosis and the high-

est infant mortality rate of the entire city. Its juvenile crime rate is three times the city average, and its adult crime rate is double the average. The air pollution from the steel plant is at times unbearable because of the huge clouds of smoke, the dust and particles spewing from its furnaces and the open hearths that burn constantly. To add insult to injury, a series of parallel railroad tracks serves the steel mill, running along the east boundary of the First Ward and physically separating it from the rest of the City. Indeed the only traffic connection between the two is a single bridge that spans the railroad tracks at Ridge Road. This man made and City approved physical barrier actually segregates the black community of Lackawanna, located in the First Ward, from the rest of the City. The tracks are often tagged as the barrier 'between the "have" and the "have nots."'"

In addition, in the *Lackawanna* case, we find intentional racial segregation. The Second Circuit Court of Appeals, after reciting several acts by various city officials, concludes:

> "This panoply of events indicates state action amounting to specific authorization and continuous encouragement of racial discrimination, if not almost complete racial segregation."

We find neither of these elements present in the instant case nor existing in the City of Toledo.

To demonstrate that the Sixth Circuit Court of Appeals is not in conflict with other Circuits, one need only review the case of *Garrett v. City of Hamtramck*, 503 F.2d 1236 (1974). The District Court found and the Sixth Circuit Court of Appeals agreed that the City of Hamtramck had

been engaged in a program of "Negro removal." The Sixth Circuit Court of Appeals said:

> "We will proceed to consider the orders of the district court as they pertain to persons displaced by the Wyandotte Project and to be displaced by it and Denton-Miller and Grand Haven. A number of findings of fact are included in the court's order, and an examination of the record indicates that the underlying findings are supported by substantial evidence. The court could properly find that the Negro population of Hamtramck fell from 14.4 percent to 8.5 percent between 1960 and 1966 and that this resulted largely from implementation of the 'planned program of population loss' adopted as part of the master plan of the Vilican-Lehman Report. The record also supports the finding that the private housing market of Hamtramck was operated in a discriminatory fashion and that city officials were aware of this. There is also considerable evidence of racism and prejudice against Negroes on the part of various city officials. All Negroes living in the original Wyandotte Project area were displaced by the first urban renewal actions there, and it is clear that they received little or no relocation assistance. We also conclude that the record supports the court's finding in its order of March 30, 1973 that the City of Hamtramck has intentionally discriminated against Negro residents in violation of their constitutional and statutory rights."

While the Sixth Circuit remanded the case for further proceedings, it recognized the appropriateness of a broad remedy where an intentional discrimination existed. No such evidence of intentional violation is found in the instant case.

Clearly, the City of Toledo is factually unlike Arlington Heights, Black Jack, Delray Beach, the area surrounding Atlanta, Lackawanna, and Hamtramck. Blacks live in virtually every area of the City, to the extent that if there is any concentration of black people in any areas of the City, it is largely, if not exclusively, the result of the free choice of the people involved.

Neither is there the slightest evidence in the record to demonstrate or even to tend to prove that there was any racially motivated conduct by any defendants in this case or by any other City officials. This is in contrast with the situation found in *Lackawanna, Hamtramck* and *Delray Beach,* and to a significant but lesser extent existing in other cases cited by the petitioners.

Perhaps most significant, however, is the fact that the percentage of minorities eligible for public housing in the City of Toledo is not significantly larger than the percentage of minorities present in the entire City. Clearly, in any city there will be a slight deviation between the percentage of minorities in the city and the percentage eligible for public housing. When such a slight difference exists, it cannot be said that an action affecting public housing has a disproportionate impact on minorities. The Sixth Circuit Court of Appeals correctly determined that this was not a case of racial discrimination. For the Supreme Court of the United States to consider this case in connection with a factual situation such as we find in the Village of Arlington Heights, would not be helpful to the development and clarity of the law on this subject. Toledo is not Lackawanna, Hamtramck, or Arlington Heights, and in terms of racial balance is totally unlike them.

CONCLUSION

It is respectfully submitted that the decision of the Sixth Circuit in this case is not in conflict with the decisions of other Circuits and that the cases cited by Petitioners are factually unlike this case and that therefor this Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

FRANK T. PIZZA
Director of Law

JOSEPH P. JORDAN
Assistant Director of Law

JOHN D. SCOUTEN
Assistant Director of Law

ROBERT E. WISNIEWSKI
Legal Intern

City of Toledo
Toledo, Ohio 43624
Telephone 419-247-6024
Counsel for Defendants-Respondents

APPENDIX

EXCERPT FROM TRANSCRIPT OF PROCEEDINGS

Testimony of Kenneth Suchan

Q. And I take it that if the TMHA figures, admission standards or policy, talk about adjusted income you would include a much larger group than 28 percent of the households, isn't that correct? A. The figure would increase from 28 percent, yes.

Q. Depending on how great the adjustment was? A. Yes.

Q. What percentage of the 28 percent of the people eligible for TMHA housing was black and what percentage white? A. Twenty-one percent of those eligible were black and 79 percent were white.

Q. You are talking about 21 percent of the 28 percent were eligible? A. That's right.

Q. Not 21 percent of the total population? A. No; 21 percent of the 35,000 households, roughly, who are eligible are black.

* * * * *

Testimony of Emerson Cole

* * * * *

Q. It is a fact, is it not, that there are black families and black people living in virtually every area of the city of Toledo? A. Yes.

* * * * *

Q. Where do you live? A. 1519 Oakwood.

Q. Where is that on the map? A. That's on the edge of the inner city.

Q. I take it that is the result of your personal preference to live in that area? A. It is.

* * * * *

Testimony of Wayne D. Palmer

Q. Where do you live, Mr. Palmer? A. 1104 McCullough Drive.

Q. And where is that? A. It's in the Secor Gardens area.

Q. Is that in what you would describe as the black corridor? A. It's slightly westward.

Q. Near what major street? A. Dorr Street and Secor Road.

Q. And how long ago did you move there? A. Fourteen years.

Q. At the time you moved there, what was the racial makeup of that neighborhood? A. About seventy percent white and thirty percent minority.

Q. Did you move there voluntarily? A. Yes, I did.

Q. Did you have any problem in moving there or taking that housing? A. No, I did not.

Q. And do you choose to remain there voluntarily? A. I choose to remain there, yes.

* * * * *

Testimony of Stratman Cooke

[By Stipulation]

* * * Cook will be received in evidence in lieu of his testimony with one additional stipulation that Mr. Cook is a man of the Negro race.

The Court: Pardon?

Mr. Jordan: That Mr. Cook is a Negro.

* * * * *

EXAMINATION

By Mr. Mulkeen:

Q. Would you state your name, please? A. My name is Stratman Cooke, S-t-r-a-t-m-a-n C-o-o-k-e.

Q. And would you please state your address? A. You want my business address?

Q. No, your residential, sir. A. 1074 Norwood Avenue.

Q. And is that in Toledo? A. Toledo, Ohio 43607.

* * * * *

Testimony of E. L. Leverette

* * * * *

Q. Would you please state your name? A. Emory L. Leverette.

Q. What is your address? A. 625 Moran Avenue, Toledo.

* * * * *

Testimony of Wayman D. Palmer

* * * * *

By Mr. Jordan:

Q. Mr. Palmer, I think you indicated that the City has spent since 1968 fifty million dollars in its neighborhood development program? A. Approximately.

Q. As I understand it, that money was designed to benefit three areas—four areas, I guess it is? A. Four areas.

Q. Three of those areas have a concentration of racial minorities in excess of ninety-eight percent; isn't that correct? A. Fairly close to that, yes.

Q. The fourth area has a racial concentration minority in excess of sixty percent? A. About that.

Q. How much of that fifty million dollars, actually speaking now of relocation in both the acquisition of real estate and in the providing funds for relocating, how much money since 1968 was actually provided to black and other minority people? A. I would say approximately forty percent of the total or approximately two million dollars.

Q. And with these funds these people were free to move to Chicago if they so chose to, Sylvania, Ohio, to Cleveland, wherever they wanted to go; isn't that right? A. May I ask what you mean by free?

Q. Well, they certainly had the choice to do that, to go to Chicago? A. They had their choice to move outside the City, yes.

Q. And nothing that your relocation officers could do could override the choice of these people to locate where they so desired; isn't that correct? A. That's correct.

Q. And I take it a great many minority who were provided these funds for relocating chose to live in areas of black concentration; isn't that right? A. It appears that the result has been that they remained within that area of concentration.

Q. And your people can't force them to go out and integrate any neighborhood because your people or because HUD or anybody else thinks that they ought to be forced to integrate the City, can they? A. No, we cannot force them to do that.

Q. Now, in addition to the neighborhood development program which provided fifty million dollars in the last six years, are there other programs that your agency has administered? A. The Model Cities Program.

Q. And how long has your agency administered the Model Cities Program? A. It's in its fifth year, winding up its fifth year.

Q. How much money has been spent in that program? A. Approximately twenty to twenty-two million dollars.

Q. And does that program have certain target areas? A. It has a specific target area, yes.

Q. It has a geographical area that it is designed to benefit exclusively; isn't that right? A. Yes.

Q. And what is that area? A. That area is approximately the same area that is encompassed by the neighborhood development program.

Q. And it would have the same concentration of racial minorities that we just spoke of? A. Yes, it would.

Q. What are some of the programs that this twenty-two million dollars was spent on? A. An assortment of health programs, educational programs, transportation programs, economic development, job training and placement, various other kinds of employment programs, some housing programs, legal assistance programs.

Q. In addition to the neighborhood development program and the Model Cities Program, are there other programs that your agency has administered? A. The activities of the Division of Inspection which administers the enforcement of State Board of Building standard codes.

Q. Are there other similar federally funded programs similar to the Model Cities Program? A. That our agency has administered?

Q. Correct. A. We currently are administering Manpower Training Programs under the Comprehensive Employment and Training Act.

Q. And how much money—how long have you been administering that program? A. Since January.

Q. January of 1974? A. Of 1974.

Q. And how much money is designed to be spent in that program? A. Approximately 3.9 million dollars.

Q. Is that designed to benefit the same general areas that you spoke of? A. No, it includes all of the City of Toledo, all of Lucas County and all of Wood County.

Q. And does it have certain private areas that you are to concentrate on? A. Not by definition, no.

Q. But in operation, does it? A. In operation, those census tracts within the cities and counties where the unemployment exceeds six percent.

Q. And does that tend, then, to give us at least one of the target areas being the same area that we just spoke of in the Neighborhood Development Program? A. The Neighborhood Development Program and Model Cities areas are included among those census tracts.

Q. Have you also certain programs of the Office of Economic Development? A. Not through the City of Toledo, through further employment.

Q. Who handles these funds? A. The Economic Opportunity Planning Association of Greater Toledo, Incorporated.

Q. What is that organization? A. It's a private nonprofit organization incorported under the laws of the State of Ohio for the—as the mechanism through which Toledo and Lucas County would receive and disperse funds under the Economic Opportunity Act of 1964.

Q. And it was basically formed by the City of Toledo and Lucas County as the local vehicle for the administration of these funds, is that correct? A. It was formed through collaboration between the City of Toledo and the County Commissioners.

Q. And these funds are also to be used in the entire Lucas County, isn't that right? A. They are target for the entire county, yes.

Q. But are there certain specific target areas that are designed to be benefited by those programs? A. There are general target areas.

Q. And do those target areas tend to be the same of the area of the Model Cities and the Neighborhood Development? A. Two of the target areas would be approximately those same.

Q. And how much money—This, as I understand it, was formed in 1964? A. Yes.

Q. And how much money has been spent by that agency in its years of existence? A. I would say close to a hundred million dollars.

Q. Now, with reference to the City's so-called workable program, it has several different aspects, doesn't it? A. Yes, it does.

Q. Could you generally tell us what those are? A. One is for code adoption and enforcement. A second is planning and programming. A third is housing and relocation. A fourth would be equal opportunity, and a fifth would be Citizen Involvement.

Q. And in which of those areas, in your opinion, has the city succeeded in implementing its workable program? A. I think there has been considerable progress made in the area of code adoption and enforcement; in planning and programming area, there has been a considerable progress made. Since the adoption of an Affirmative Action Program in June of '73 by the City of Toledo, there have been significant strides made in that area, particularly as it relates to employment.

Q. What was the fifth item you mentioned? A. Citizen Involvement or Citizen Participation.

Q. How has the City's performance been in that area? A. I would say generally good.

Q. So that what you're saying is that only in this one area of housing and relocation is it your opinion that the City has not performed as well as it should have? A. And in the Equal Opportunity section. It has not performed as well as I think it should have.

Q. Now, you've talked about relocation and said that the—or replacement, I guess, and said that the City should have replaced 3,000 houses and, in fact, only replaced 1,500, roughly half, 1,500. Are you acquainted with 235 and 236 housing? A. Yes, I am.

Q. And that is housing for the low and moderate income housing, isn't it? A. Yes, it is.

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